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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

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9 National Union Fire Insurance Company of  
Pittsburgh, Pennsylvania, a Pennsylvania  
10 Corporation,

11 Plaintiff,

12 vs.

13 Aero Jet Services, LLC; 757BD, LLC,

14 Defendants.

No. CV11-1212-PHX-DGC

**ORDER**

15 Defendant 757BD filed a motion for attorneys' fees related to its motion to  
16 dismiss which the Court granted on October 7, 2011. Doc. 27; *see* Doc. 25. The motion  
17 has been fully briefed. Docs. 30, 32. For reasons that follow, the court will grant the  
18 motion.

19 **I. Background.**

20 On July 26, 2011, Plaintiff, National Union Fire Insurance Company of Pittsburgh,  
21 Pennsylvania, filed a complaint under the Federal Declaratory Judgment Act ("FDJA")  
22 seeking a judgment that it had no obligation to defend or indemnify its insured, Aero Jet  
23 Services, in an underlying state court lawsuit brought against Aero Jet by 757BD, LLC.  
24 Doc. 1. Defendant 757BD filed a motion to dismiss (Doc. 14), and Defendant Aero Jet  
25 joined the motion (Doc. 16), arguing that the Court should abstain from exercising its  
26 jurisdiction over the FDJA claim because Plaintiff could bring its request for declaratory  
27 judgment in state court. The Court granted Defendants' motion, finding that National  
28 Union had an adequate remedy in state court and that the relevant 9th Circuit factors

1 weighed in favor of abstention. Doc. 25 at 6-11. 757BD now asks the Court to award  
2 attorneys' fees, estimated to be approximately \$20,000, in connection with this action.  
3 Doc. 27. 757BD filed a memorandum and documentation in support of its motion.  
4 Doc. 29.

## 5 **II. Analysis.**

6 757BD argues that it is entitled to an award of attorneys' fees under A.R.S. § 12-  
7 341.01(A) as a successful party in a contested contract action. Doc. 29 at 2. National  
8 Union raises three arguments in opposition: (1) the action before this Court was never  
9 contested, so there is no statutory basis for an award; (2) even if the motion has a  
10 statutory basis, the relevant factors do not support awarding fees; and (3) even if a fee  
11 award is proper, the claimed fees are unreasonable. Doc. 30 at 5-12.

### 12 **A. Statutory Basis for the Requested Fees.**

13 Section 12-341.01(A) states, in relevant part, that "[i]n any contested action  
14 arising out of a contract, express or implied, the court may award the successful party  
15 reasonable attorney fees." Ariz. Rev. S. § 12-341.01(A). 757BD argues on the basis of  
16 *Lozier v. Auto Owners Ins. Co.*, 951 F.2d 251, 256 (9th Cir. 1991), that this statute  
17 applies to insurance contract disputes in federal court. Doc. 29 at 2. 757BD also argues  
18 on the basis of *Fulton Homes Corp. v. BBP Concrete*, 155 P. 3d 1090, 1096 (Ariz. Ct.  
19 App. 2007), and *Britt v. Steffen*, 205 P.3d 357, 359 (Ariz. Ct. App. 2008), that  
20 adjudication on the merits is not required and a party that obtains dismissal is a successful  
21 party under the statute. *Id.* 757BD also cites *Nationwide Mut. Ins. Co. v. Granillo*, 573  
22 P.2d 80, 85-86 (Ariz. 1977), demonstrating that a successful party in an insurance  
23 declaratory judgment action need not be party to the insurance contract, and additional  
24 cases showing that Arizona law allows for the recovery of fees incurred in a post-  
25 judgment action seeking attorneys' fees. *Id.* (citing cases).

26 National Union responds that § 12-341.01(A) requires a party seeking attorneys'  
27 fees to have prevailed in a "contested action" and that National Union's FDJA complaint  
28 was not "contested" because the Court exercised its discretion to dismiss the case and

1 Defendants never filed an answer addressing the merits. Doc. 30 at 5, 9-13. National  
2 Union relies on a number of cases, principally *Morrison v. Shanwick Int'l Corp.*, 804  
3 P.2d 768 (Ariz. Ct. App. 1990), for the proposition that an action is contested where “the  
4 defendant has appeared *and generally defends against the claims and demands made by*  
5 *the plaintiff.*” Doc. 30 at 10 (quoting 804 P.2d at 775) (emphasis added by National  
6 Union); 11. National Union notes that *Shanwick* found the action contested where  
7 defendants filed an answer to the complaint. *Id.* (citing 804 P.2d at 775-76).

8 National Union argues that *Lozier* is inapposite because the plaintiff was awarded  
9 attorneys’ fees when she prevailed on the merits of her third-party insurance claim after a  
10 six-day bench trial. *Id.*; see 951 F.2d at 253. National Union also distinguishes *Fulton*  
11 *Homes* because the parties awarded attorneys’ fees – subcontractors named to indemnify  
12 defendant home-builders in a home-owners’ class action – participated in several rounds  
13 of pleadings before having the suit dismissed. Doc. 30 at 11-12 (see 155 P.3d at 1096).  
14 National Union similarly discounts *Britt* and *Granillo* because the prevailing parties  
15 answered the complaints and thus contested the actions. *Id.* at 12.

16 The cases cited by the parties do not support a blanket requirement that the  
17 prevailing party answer the substantive claims in the complaint for an action to be  
18 contested and for that party to be eligible for attorneys’ fees under § 12-341.01(A).  
19 Neither do the cases where defendants filed answers or prevailed at trial appear to make  
20 the nature of the pleadings the determining factor for awarding fees. In *Fulton Homes*,  
21 the court stated that “[a]lthough the claims asserted in Fulton’s third-party complaint  
22 were never litigated,” the subcontractors

23 were forced to expend money engaging in discovery, attempting to obtain a  
24 stipulation from the homeowners regarding the damages sought, filing a  
25 joint status conference report, and filing a request for permission to file a  
26 motion for summary judgment, among other activities, all in an attempt to  
extricate themselves from a lawsuit in which the trial court concluded they  
should never have been forced to participate.

27 155 P.3d at 1096. The rationale for awarding fees in *Fulton Homes* is not that the  
28 defendant filed an answer, but that the prevailing party was compelled to expend

1 resources in its bid to get the suit dismissed. Neither does *Fulton Homes* require that the  
2 suit be improper or the dismissal process be protracted. *See id.* at 1094 (“Assuming that  
3 the third-party complaint was entirely proper . . . and that Fulton did not delay dismissing  
4 the complaint for even one minute longer than necessary, that fact would not protect  
5 Fulton from a fee award under A.R.S. § 12-341.01.”).

6 *Granillo* and *Britt* do not persuade the court that § 12–341.01(A) is inapplicable  
7 where defendants never answered the complaint but nonetheless litigated the propriety of  
8 the Court’s jurisdiction. Those cases never addressed whether an answer to the complaint  
9 is required. In *Granillo*, the Arizona Supreme Court ruled that the state court erred when  
10 it determined that a declaratory judgment action was not the type of case for which  
11 attorneys’ fees could be awarded, and it further rejected the argument that the party  
12 requesting attorneys’ fees must be a party to the insurance contract. 573 P.2d at 85. That  
13 case, as here, involved an insurance company seeking declaratory judgment regarding its  
14 coverage against both its insured and the claimant against the insured. *Id.* at 82, 85. The  
15 court reached the merits of the claim and ruled that the insurance company owed  
16 coverage. *Id.* at 82. The Arizona Supreme Court’s rationale for finding that the trial  
17 court should have awarded attorneys’ fees was that “[t]hough [defendants] prevailed, they  
18 were forced to incur legal expenses.” *Id.* at 86. The court quoted the statute as stating  
19 “[t]he award of reasonable attorneys’ fees should be made to mitigate the burden of the  
20 expense of litigation for a just claimant.” *Id.* (quoting A.R.S. § 12–341.01(B)).<sup>1</sup>

21 *Granillo* suggests that a party that prevails in defending against a declaratory  
22 judgment action is entitled to recover attorneys’ fees if it took actions in its own defense  
23 and incurred expenses in doing so. *Britt* is not to the contrary. The issues in *Britt* were  
24 (1) whether a party requesting attorneys’ fees after the court dismissed a complaint for  
25 lack of prosecution qualified as a “successful party” and (2) whether the court could rule  
26 on a subsequent request for attorneys’ fees even though the court had dismissed the

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28 <sup>1</sup> The 1978 Amendments substituted “a just claim or just defense” for “a just  
claimant.” *See* Historical and Statutory Notes, Ariz. Rev. S. § 12-341.01 (B).

1 action and no longer had jurisdiction over the underlying claims. 205 P.3d at 357, 359.  
2 The Arizona Court of Appeals held that a defendant who succeeds in having an action  
3 dismissed without prejudice “is still considered a ‘successful party’ for purposes of  
4 A.R.S. § 12–341.01(A) even though such a dismissal does not operate as an adjudication  
5 on the merits.” *Id.* It further held that the court is not precluded from awarding fees  
6 “until the underlying merits of the cause are finally determined.” *Id.* at 360. The Court  
7 finds no reason why the rationale for awarding fees applied in *Granillo* and *Britt* does not  
8 apply here, where the requesting party did not answer the complaint but nonetheless  
9 incurred expenses to obtain dismissal of the case.

10 *Mark Lighting Fixture Co., Inc. v. General Elec. Supply Co.*, 745 P.2d 123 (Ariz.  
11 Ct. App. 1986) (overruled on other grounds by statute), cited in *Britt*, supports this  
12 conclusion. In *Mark Lighting*, the Arizona Court of Appeals noted the key difference  
13 between § 12-348, permitting fees for a party “which prevails by an adjudication on the  
14 merits,” and § 12-341.01, permitting fees for a successful party in an “action” arising out  
15 of contract. 745 P.2d at 128 (citing *Wagenseller v. Scottsdale Memorial Hosp.*, 710 P.2d  
16 1025 (Ariz. 1985)). The court stated that “[i]t is apparent . . . that our legislature intended  
17 to allow recovery of costs and attorney’s fees when a party succeeds in the particular  
18 proceeding, which is the ‘action,’ without regard to whether the substantive allegations  
19 presented therein were disposed of at that time.” 745 P.2d at 129. The court continued:  
20 “It is not relevant . . . whether the dismissal, purported to be without prejudice, operates  
21 as a complete dismissal . . . or whether the underlying claim is still viable and will be  
22 determined in a subsequently filed action. The only relevant point is that the defendants  
23 were successful in the particular action in question.” *Id.*

24 Here, Defendants contested National Union’s request that this Court take  
25 jurisdiction of its FDJA claim and issue declaratory judgments on its behalf. Defendants  
26 were successful parties in this action even though the Court did not reach the substance of  
27 National Union’s FDJA claims and National Union may yet prevail on its claims by  
28 bringing a subsequent action in state court. Accordingly, § 12–341.01(A) provides an

1 appropriate statutory basis for 757BD's motion for attorneys' fees.

2 **B. Appropriateness of Awarding Fees.**

3 Section 12–341.01(A) is a discretionary statute. Even if it is applicable, the Court  
4 must determine the appropriateness of awarding fees. The Arizona Supreme Court has  
5 articulated six factors to consider. *Wagenseller*, 710 P.2d at 1049 (Ariz. 1985).

6 **1. Whether the Claim or Defense was Meritorious.**

7 757BD argues that National Union's attempt to seek declaratory judgment in  
8 federal court lacked merit. Doc. 29 at 3. 757BD cites several cases from this district in  
9 which courts have dismissed similar FDJA actions. *Id.* (citing cases). National Union  
10 responds that the Court never addressed the merits of its claims for relief, so this factor  
11 weighs against awarding fees. Doc. 30 at 13. 757BD replies that National Union's claim  
12 in the context of the motion to dismiss was that the Court should exercise jurisdiction and  
13 that this claim lacked merit. Doc. 32 at 5-6.

14 The court's jurisdiction is part of any claim for relief. Fed. R. Civ. P. 8(a)(1).  
15 National Union had a statutory basis for requesting the Court's jurisdiction, but that basis  
16 was discretionary. The FDJA states that federal courts “*may* declare the rights and other  
17 legal relations of any interested party seeking such a declaration.” 28 U.S.C. § 2201(a)  
18 (emphasis added). In light of the fact that Arizona courts have held that attorneys' fees  
19 are appropriate in any successful “action,” including one for dismissal on jurisdictional  
20 grounds, the issue is whether National Union's claim that the Court should exercise its  
21 discretionary jurisdiction and grant relief under the FDJA was meritorious. In granting  
22 the motion to dismiss, the Court concluded that the long-standing *Brillhart* factors  
23 weighed against jurisdiction. Doc. 25 at 3-4, 11. The Court reviewed settled Ninth  
24 Circuit case law showing that this was particularly true where, as here, the parties were  
25 involved in an underlying state court action involving the same factual issues, and the  
26 coverage determination – which was subject to state insurance law – could be made in  
27 state court. *See* Doc. 25 at 4-7, 9-10. The Court concludes that National Union's claim  
28 of federal jurisdiction of its declaratory judgment action lacked merit. The cases 757BD

1 cites support this conclusion. This factor weighs in favor of awarding attorneys' fees.

2 **2. Whether the Litigation Could Have Been Avoided or Settled.**

3 757BD argues that this litigation could have been avoided because National Union  
4 rejected a request by defense counsel to dismiss the declaratory judgment action and re-  
5 file in state court. Doc. 29 at 3; *see* Doc. 24-1 (Ex. A). National Union argues that this  
6 factor does not apply because the jurisdictional issue was not susceptible to settlement or  
7 other resolution on the merits. Doc. 30 at 5. National Union appears to argue that  
8 because only the federal court could rule on whether it would take jurisdiction of  
9 National Union's FDJA claims, that issue could not have been avoided or settled by  
10 taking the action to state court. National Union's reference to the merits of the suit  
11 suggests that National Union also had no other vehicle to resolve the coverage issue.

12 The Court agrees that the jurisdictional issue could not have been resolved or  
13 settled but for litigating it in federal court. The need to litigate that issue could have been  
14 avoided, however, if National Union had sought declaratory relief in state court as the  
15 Court ultimately ruled would be appropriate in this case. It is not true that National  
16 Union had no other avenue for addressing the merits of its declaratory judgment claim.  
17 *See* Doc. 25 at 5-7, 9, 10. This factor weighs in favor of awarding attorneys' fees.

18 **3. Whether Assessing Fees Would Cause Extreme Hardship.**

19 757BD argues on the basis of data made publicly available by the Arizona  
20 Department of Insurance that National Union is a large insurance company with  
21 extensive assets and that the instant request for attorneys' fees will not pose an extreme  
22 hardship. Doc. 29 at 3 (*see* <http://www.id.state.az.us>). National Union responds that – in  
23 the broad context – awarding fees in this case could result in undue hardship and  
24 increased premiums because it could act as a disincentive to seek declaratory judgments  
25 and thus lead to future payments of uncovered claims. Doc. 30 at 14. National Union's  
26 speculation of future harm does not support a finding of extreme hardship. Even if an  
27 award of fees would dissuade National Union from bringing similar cases in federal  
28 court, National Union could still pursue these actions in state court. This factor weights

1 in favor of awarding attorneys' fees.

2 **4. Whether the Successful Party Prevailed With Respect to All**  
3 **of the Relief Sought.**

4 757BD argues that the Court granted all the relief Defendants sought when it  
5 granted their motion to dismiss. Doc. 29 at 3. National Union responds that Defendants  
6 prevailed on no claims for relief. Doc. 30 at 14. As discussed in Part A, the relevant  
7 inquiry for purposes of awarding fees is whether the party requesting fees prevailed on  
8 the particular action in question. Here, 757BD requests attorneys' fees related to filing its  
9 motion to dismiss. Defendants prevailed with respect to all the relief sought in that  
10 motion. This factor weighs in favor of awarding attorneys' fees.

11 **5. Whether the Legal Question Presented Was Novel and**  
12 **Whether Such Claims or Defenses Have Previously Been**  
13 **Adjudicated in this Jurisdiction.**

14 757BD argues that the jurisdictional question presented in its motion to dismiss  
15 was not novel and that courts in this district have consistently dismissed similar FDJA  
16 actions. Doc. 29 at 4. National Union responds only that no "legal question" was  
17 presented because the Court dismissed its action before any such question could be  
18 considered. Doc. 30 at 14. The Court does not agree. As previously discussed, an award  
19 of attorneys' fees under § 12-341.01(A) pertains to any contested action under contract  
20 upon which the claimant prevailed. Here, Defendants' prevailed on a motion to dismiss.  
21 The question of whether the Court should have exercised jurisdiction of National Union's  
22 FDJA claims was not novel. As demonstrated in the Court's prior order, this question  
23 has been repeatedly adjudicated in this district. This factor weighs in favor of awarding  
24 attorneys' fees.

25 **6. Whether the Award Would Discourage Other Parties with**  
26 **Tenable Claims or Defenses from Litigating or Defending**  
27 **Legitimate Contract Issues for Fear of Incurring Liability for**  
28 **Substantial Amounts of Attorney's Fees.**

29 757BD argues that this factor supports an award of attorneys' fees because  
30 insurers seeking declaratory relief would not be discouraged from seeking relief in state



1 court. Doc. 29 at 4. National Union responds that denying federal court jurisdiction  
2 already deprives a party of its choice of forum “and undermines the federal interest in  
3 providing a neutral forum free of an appearance of favoritism against an out-of-state  
4 party.” Doc. 30 at 14 (quoting *Allstate Ins. Co. v Davis*, 430 F. Supp. 2d 1112, 1121  
5 (D. Haw. 2006)). National Union concludes that awarding attorneys’ fees would “add  
6 insult to injury.” *Id.*

7 The Court is not persuaded that an award of attorneys’ fees in this case will  
8 discourage other insurance companies with tenable claims from litigating their contract  
9 issues. A fee award may discourage parties from bringing insurance declaratory  
10 judgment actions in federal court, particularly where, as here, an underlying state court  
11 action is pending based on the same factual issues. Because the state court already  
12 provides an appropriate forum for such relief, however, this is unlikely to discourage  
13 parties from litigating or defending legitimate contract issues. Moreover, an award of  
14 attorneys’ fees in this case would not discourage insurance companies from seeking  
15 declaratory relief in federal court for coverage issues – such as those the Court  
16 distinguished from this case in its prior order – in which no related state court action has  
17 been filed (*see* Doc. 25 at 6) or in which the state court has already concluded the  
18 underlying insurance claims without addressing the coverage issue (*see id.* at 9). On  
19 balance, an award of attorneys’ fees in this case would not discourage other parties with  
20 tenable claims from litigating and defending their contract issues. This factor weighs in  
21 favor of awarding attorneys’ fees.

## 22 **6. Summary.**

23 The six factors considered by the Court all favor an award of fees. The Court  
24 accordingly concludes that an award of attorneys’ fees is appropriate in this case.

## 25 **C. Reasonableness of the Requested Fees.**

26 757BD requests a total of \$19,937.50 in fees, representing \$18,755 expended  
27 through October, 2011, and an additional \$1,182.50 expended in connection with this  
28 motion. Doc. 29 at 4-5. These fees are based on an hourly rate of \$275. *Id.* at 4. 757BD

1 argues that these fees are reasonable. *Id.* at 5. 757BD filed appropriate documentation,  
2 including a copy of its fee agreement, a task-based itemized statement of fees, and an  
3 affidavit of counsel as required by Local Rule 54.2(d). Doc. 29-1; *See* LRCiv 54.2(d)(1)-  
4 (5). In its reply brief, 757BD requests an additional \$2,337.50 in connection with 8.5  
5 hours spent analyzing the arguments in National Union’s opposition motion, researching  
6 issues, and drafting and revising its reply. Doc. 32 at 11.

7 National Union responds that the requested fees are unreasonable. Specifically,  
8 National Union argues that the 53.5 hours counsel spent on the 7 page motion to dismiss  
9 and the 11 page reply brief are excessive. Doc. 30 at 15. Even if counsel were “starting  
10 from scratch,” National Union argues that two full days of billable work, or 16 hours,  
11 would have been sufficient for the motion to dismiss, and one additional day, or 8 hours,  
12 would have been sufficient to write the reply. *Id.* National Union further argues that  
13 counsel in this case did not “start from scratch,” but substantially recycled a prior motion  
14 to dismiss and reply brief filed in *Great American Assurance Co. v. Bartell*, No. 2:07-  
15 CV-1341-PHX-EHC, 2008 WL 1927333 (D. Ariz. 2008). *Id.* National Union asks the  
16 Court to reduce by half the amount suggested above and award fees of \$3,300, which  
17 represents 12 hours at counsel’s \$275 hourly rate. National Union also argues that denial  
18 of fees spent on the motion for attorneys’ fees is proper because this motion was not  
19 grounded in tenable legal claims and it also recycled significant portions of a motion  
20 counsel filed in a similar matter. Doc. 30 at 16. National Union asks that if the Court  
21 does award fees for this motion, it limit the award to \$750, reflecting three hours of work.  
22 *Id.* In sum, National Union asks that the total award of fees, if granted, not exceed  
23 \$4,050. *Id.*

24 757BD argues in reply that National Union has not objected to the reasonableness  
25 of counsel’s hourly rate, but only the amount of hours claimed. Doc. 32 at 8. As to the  
26 hours, 757BD argues that National Union has not complied with the specificity  
27 requirements of Local Rule 54.2(f) which states that a memorandum in opposition “shall  
28 identify with specificity all disputed issues of material fact and shall separately identify

1 each and every disputed time entry or expense item.” *Id.* (citing LRCiv 54.2(f)). Instead,  
2 National Union “has made the conclusory assertion that 53.5 hours of attorney time is  
3 excessive for the work described.” *Id.* 757BD argues both that National Union’s  
4 objections fail as a matter of law and that National Union’s argument that the fees should  
5 be reduced because counsel only “recycled” previous work lacks merit. *Id.* at 9. In  
6 particular, 757BD states that there are numerous differences between this litigation and  
7 *Bartell*. 757BD identifies three key differences. First, counsel spent substantial time  
8 developing the “background” section of the motion to dismiss, which initially included a  
9 lengthy discussion of the underlying state litigation that had generated volumes of  
10 documents over a period of three years. *Id.* 757BD argues that a detailed understanding  
11 of this litigation was necessary to address the numerous coverage issues raised in  
12 National Union’s denial letter and its complaint. None of this work was aided by  
13 counsel’s prior work in *Bartell* because the state court litigation and coverage issues in  
14 each case were distinct. *Id.* Second, the motion to dismiss addressed an additional  
15 pleading defect with regard to diversity jurisdiction not raised in *Bartell* that required  
16 further research and investigation before counsel ultimately decided to de-emphasize this  
17 argument. *Id.* at 10. Third, counsel spent considerable time updating case law since  
18 *Bartell* and analyzing and responding to dozens of cases cited by National Union in its  
19 response. *Id.* With respect to the motion for attorneys’ fees, 757BD argues that although  
20 counsel used the same outline as it had in a prior motion, the substance and exhibits of  
21 the memoranda were substantially different. *Id.* at 11. 757BD also states that counsel  
22 spent an additional 8.5 hours on its reply brief, analyzing and addressing specific  
23 arguments National Union raised in its response. 757BD argues that this was reasonable  
24 in light of National Union’s claim that its fee request was “baseless.” *Id.*

25       Upon review of Defendants’ motion to dismiss and the motion that counsel  
26 submitted in *Bartell*, the Court agrees with National Union that many sections of  
27 Defendants’ motion are taken directly from counsel’s earlier work. The Court also agrees  
28 with 757BD that the motion supports additional work, as reflected in the background

1 section (*see* Doc. 14 at 1-3) and the section related to “other pertinent factors” (*see id.*  
2 at 6-7), showing that counsel had to expend time becoming familiar with the underlying  
3 litigation and the precise coverage issues presented in this case. Additionally, review of  
4 counsel’s itemized statement of fees shows that counsel billed considerable time for calls  
5 and emails to 757BD and Aero Jet, as well as to National Union’s counsel, regarding  
6 such things as coverage issues, the stipulation for extension, a settlement proposal, and  
7 the stipulation on the diversity jurisdiction issue. Counsel also billed for time analyzing  
8 documents, including the complaint, Aero Jet’s insurance policies, and National Union’s  
9 denial letter. National Union makes no specific objection to these time expenditures, and  
10 the Court does not find them unreasonable. By the Court’s calculations, counsel billed  
11 approximately 16 hours for tasks directly related to additional case-law research and  
12 drafting and revising the motion to dismiss. The Court does not find this to be  
13 unreasonable.

14 The Court also agrees with National Union that significant portions of 757BD’s  
15 reply brief mirror portions of counsel’s earlier work. 757BD is correct, however, that  
16 counsel made substantive changes and additions, particularly by incorporating  
17 discussions of recent District of Arizona cases, including *Bartell*. By the Court’s  
18 calculations, counsel billed approximately 25 hours for tasks directly related to additional  
19 case-law research and drafting and revising its reply. Given that National Union’s  
20 opposition motion was 17 pages and cited 67 cases, the Court is not persuaded that the  
21 time claimed for additional research is unreasonable. 757BD’s motion for attorneys’ fees  
22 also follows the outline of a prior motion but differs in substantive content and supporting  
23 documentation. The Court is not persuaded that the 4.3 hours billed for preparing this  
24 motion was excessive. Additionally, the Court finds that it was not unreasonable for  
25 counsel to bill an additional 8.5 hours for time spent researching National Union’s  
26 objections to its motion for attorneys’ fees and drafting the reply.

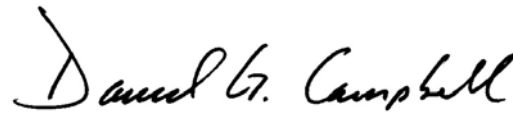
27 Having considered the record as a whole and the relevant fee award factors, *see*  
28 *Associated Indemnity Corp. v. Warner*, 694 P.2d 1181, 1184 (Ariz. 1985), the Court finds

1 the requested fee award under § 12-341.01(A) to be reasonable and appropriate. *See also*  
2 LRCiv 54.2(c)(3)(A)-(M) (listing factors bearing on the reasonableness of a fee award);  
3 *Hensley v. Eckerhart*, 461 U.S. 424, 429-30 & n.3 (1983). The Court will grant 757BD's  
4 motion for a fee award against National Union in the amount of \$22,275.

5 **IT IS ORDERED:**

- 6 1. Defendant 757BD's motion for an award of attorneys' fees (Doc. 27) is  
7 **granted.**
- 8 2. Pursuant to A.R.S. § 12-341.01(A), attorneys' fees in the amount of  
9 **\$22,275** are awarded in favor of 757BD and against National Union.

10 Dated this 16th day of February, 2012.

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15 David G. Campbell  
16 United States District Judge  
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